DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. JEANNIE JOHNS Respondent	Case Nos.: I-00-60103 I-00-60111

FINAL ORDER

On July 31, 2001, the Government served a Notice of Infraction (No. 00-60103) upon Respondent Jeannie Johns, alleging that she violated D.C. Official Code § 3-1210.02, which prohibits persons who are not authorized to practice a health occupation from representing that they are so authorized, and D.C. Official Code § 3-1210.03(q), which contains a specific prohibition against the use of the terms "psychology," psychologist" or similar terms by a person who is not authorized to practice psychology.[1] For the latter charge, the Notice of Infraction described the nature of the infraction as "unlicensed practice of psychology," not unauthorized use of the terms described in § 3-1210.03(q). The Notice of Infraction alleged that the violations occurred on January 18, 2001 at 3000 Connecticut Avenue, N.W. It sought a fine of $500 for each alleged offense.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C.

[1] The Notice of Infraction listed the statutory provisions as they are found in the former version of the D.C. Code, D.C. Code §§ 2-3310.2 and 2-3310.3(q) (1981 ed.)

Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on August 31, 2001, this administrative court issued an order finding Respondent in default, assessing the statutory penalty of $1,000 provided by D.C. Official Code § 2-1801.04 (a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served a second Notice of Infraction (No. 00-60111) on September 12, 2001. That notice again charged Respondent with a violation of D.C. Official Code § 3-1210.02 (former § 2-3310.2). The notice also continued to describe the other violation alleged against Respondent as "unlicensed practice of psychology." Instead of alleging a violation of D.C. Official Code § 3-1210.03(q) (formerly § 2-3310.3(q)), however, the second Notice of Infraction charged Respondent with violating D.C. Official Code § 3-1210.01 (formerly D.C. Code § 2-3310.1 (1981)), which prohibits the unauthorized practice of a health occupation.

Respondent also did not answer the second Notice of Infraction within twenty days of service. Accordingly, on October 12, 2001, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and assessing total penalties of $2,000 pursuant to D.C. Official Code §§ 2-1801.04 (a)(2)(A), and 2-1801.04(a)(2)(B). The Final Notice of Default also set November 14, 2001 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines, penalties or fees. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

The Government, represented by Gregory Scurlock, the inspector who issued the Notices of Infraction, appeared for the hearing on November 14, 2001. Respondent did not appear. Based upon the testimony of the Government's witness, my evaluation of his credibility, the

documents admitted into evidence and the entire record in this matter, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondent Jeannie Johns is not licensed to practice psychology in the District of Columbia. On March 6, 2001, the Coordinator for Psychology for the Division of Special Education of the District of Columbia Public Schools ("DCPS") forwarded to the Acting Executive Director of the Board of Psychology a copy of a 12-page report prepared by Respondent entitled "Comprehensive Psychoeducational Evaluation." Petitioner's Exhibits ("PX") 100-101. The report described various psychological tests that Respondent administered to a preschool student, her evaluation of the results of those tests and her recommendations about appropriate educational programs for the student. The report stated that tests were administered on September 29, 2000, November 1, 3, 20 and 29, 2000, and January 18, 2001. It was written on a letterhead stating that Respondent's office address was 3000 Connecticut Avenue, N.W., Suite 401, Washington, D.C. 20008. The letterhead also listed a telephone number with a 202 area code, and a fax number with a 703 area code. Under Respondent's signature on the last page of the report were the words "Jeannie Johns, Ph.D., Psychologist: Psychoeducational Examiner."

Respondent maintains a listing in an on-line "yellow pages" directory of psychologists. That directory also shows her address as 3000 Connecticut Avenue, N.W., Washington, D.C. and includes a telephone number with a 202 area code. PX 111.

Mr. Scurlock served the first Notice of Infraction by certified mail to Respondent at 3215 Graham Road, Falls Church, VA 22042, as evidenced by the certificate of service. Mr. Scurlock

obtained that address from an internet "white pages" search showing that the fax number listed on Respondent's letterhead is assigned to Respondent at that address. PX 104. After Respondent failed to claim the letter at the post office, the Postal Service returned it marked "unclaimed." PX 105. Mr. Scurlock also made several visits to 3000 Connecticut Avenue, Suite 401, the address on Respondent's letterhead, in an effort to deliver the first Notice of Infraction to her. Respondent was not there when he visited. On one such occasion, he encountered another person who shared the office suite and she confirmed that Respondent had an office there.

Mr. Scurlock served the second Notice of Infraction by certified mail to Respondent at 3000 Connecticut Avenue, N.W., Suite 401, as evidenced by the certificate of service. The second Notice of Infraction actually was received at that address, as evidenced by the return receipt. PX 110.

As evidenced by the delivery confirmation receipts in the record, Respondent received copies of both this administrative court's August 31, 2001 order, which included a copy of the first Notice of Infraction, and the October 12, 2001 order, which included copies of both Notices of Infraction and informed her of the hearing date and time. Both orders were addressed to her at 3000 Connecticut Avenue, N.W., Suite 401.

III. Conclusions of Law

A. Service

The Civil Infractions Act, D.C. Official Code § 2-1802.05, permits service of a Notice of Infraction by mail addressed to the Respondent's last known home or business address. The first Notice of Infraction was addressed to Respondent's last known home address, and the second Notice of Infraction was addressed to her last known business address. Service of the Notices of Infraction, therefore, complied with the Civil Infractions Act. The service also complied with the Due Process Clause, which requires the Government to make a reasonable attempt to provide actual notice of a proceeding in which a party's property interests are at stake. *Dusenbery v. United States,* No. 00-6567, slip op. at 8 (U.S., January 8, 2002). Mail addressed to a party's last known home or business address satisfies that standard. *Id.* at 7-8; *Mennonite Board of Missions v. Adams,* 462 U.S. 791, 800 (1983). A party's refusal to accept delivery of such mail does not require the Government to make additional efforts to notify her. *Malone v. Robinson,* 614 A.2d 33, 38 n.9 (D.C. 1992). Thus, the return of the first Notice of Infraction due to Respondent's failure to claim it from the post office does not affect the validity of service. Moreover, the orders of August 31, 2001 and October 12, 2001, each of which contained a copy of the first Notice of Infraction, actually were received at Respondent's last known business address. Respondent, therefore, had sufficient notice of the issuance of the first Notice of Infraction.[2]

[2] Both the second Notice of Infraction and the October 12 order, which gave notice of the hearing date, actually were received at Respondent's last known business address. Consequently, no issue arises as to the adequacy of service of those documents.

B. The Violation of § 3-1210.02

Both the first and the second Notices of Infraction charge Respondent with violating D.C. Official Code § 3-1210.02, which provides:

> Unless authorized to practice a health occupation under this chapter, a person shall not represent to the public by title, description of services, methods or procedures, or otherwise that the person is authorized to practice the health occupation in the District.

To establish a violation of § 1210.02, the Government must prove: 1) that the Respondent is not authorized to practice a health occupation in the District of Columbia; 2) that the Respondent represented, either by a) title, b) description of services, methods or procedures, or c) in some other fashion, that she was authorized to practice a health occupation in the District; and 3) that the Respondent made such a representation to the public. *DOH v. Peterson,* OAH No. I-00-60018 at 4 (Final Order, December 4, 2001). The Government has established the first element. Psychology, is included within the statutory definition of a "health occupation," D.C. Official Code §§ 3-1201.01(7), 3-1201.02(16), and Respondent does not have the license to practice required by D.C. Official Code § 3-1205.01. As to the second and third elements, Respondent's use of the title "Psychologist" with a District of Columbia address and phone number in a yellow pages listing constitutes a representation to the public that she is authorized to practice psychology in the District. Including her name in a listing of psychologists that is available to the general public represents that she is available to provide a psychologist's services for members of the public. Due to the pervasive regulation of health occupations, including psychology, such a representation carries with it an implied representation that she is authorized to do so. *DOH v. Milton,* OAH No. I-00-60106 at 8 (Final Order, March 20, 2001) (Use of "D.D.S." on signs and business cards and "Dentistry" on office door represents availability to

perform dental services and implies that user is authorized to do so.) *See Peterson, supra,* Final Order at 5 (If "M.D." and "neurology" are used when describing services offered to the public, there is an implied representation that user is authorized to practice medicine.) Respondent's yellow pages listing, therefore, violated § 3-1210.02 because it represented to the public that she was licensed to practice psychology in the District of Columbia.[3]

C. The Remaining Allegations

The two other charges listed in the Notices of Infraction are not ripe for decision at this time. The first Notice of Infraction charges Respondent with violating D.C. Official Code § 3-1210.03(q), while the second charges her with violating D.C. Official Code § 3-1210.01. Neither charge has been alleged in a second Notice of Infraction, as required by the Civil Infractions Act. D.C. Official Code § 2-1802.02(f). Until Respondent fails to answer two Notices of Infraction accusing her of the same violation, a default hearing is premature. If the Government wishes to pursue either the § 3-1210.03(q) charge and/or the § 3-1210.01 charge, it may move (with notice to Respondent) to amend one of the Notices of Infraction to state the charge it wishes to pursue, or it may serve an additional Notice of Infraction that will function as a second Notice of Infraction for one or both of the charges.[4] If it does neither, it will be deemed to have elected not to pursue the additional charges, and they will be dismissed.

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[3] This holding makes it unnecessary to decide whether Respondent's submission to DCPS of a report referring to herself as a "Psychologist" was a representation "to the public" within the meaning of § 3-1210.02.

[4] If Respondent remains in default, the Government also may seek to rest on the evidentiary record already compiled in this case, instead of appearing for a new hearing.

D. Fine and Penalties

Respondent's violation of § 3-1210.02 is a Class 2 infraction, punishable by a fine of $500 for a first offense within a three-year period. 16 DCMR 3212.1(r), 3201. The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If a recipient fails to answer a second Notice of Infraction without good cause, the penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f). Because Respondent introduced no evidence of her reasons for failing to answer the Notices of Infraction, the statute requires her to pay a penalty of $1,000, in addition to the fine of $500, for failing to answer the charge of violating § 3-1210.02.[5]

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay a total of **ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

[5] Consideration of any penalty for Respondent's failure to answer the other charges against her must await final disposition of those charges.

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that, on or before February 13, 2002, the Government may file and serve upon Respondent either a motion for leave to amend one of the Notices of Infraction at issue in this case, or a new Notice of Infraction that will function as a second Notice of Infraction charging either a violation of D.C. Official Code § 3-1210.03(q) or a violation of D.C. Official Code § 3-1210.01, or both. If the Government fails to do so, those charges contained in the Notices of Infraction at issue in this case will be dismissed.

/s/ 1/30/02

John P. Dean
Administrative Judge